



International Union of Operating Engineers

LOCAL 324

CHARTERED FOR THE ENTIRE STATE OF MICHIGAN

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COMMENTS ON SB 1072, BINDING ARBITRATION REFORM INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 324 SENATE COMMITTEE ON REFORMS AND RESTRUCTURING FEBRUARY 3, 2010

The International Union of Operating Engineers, Local 324, is proud to represent members who work as EMT's, providing vital services to citizens of our state, and who are covered by PA 312 of 1969. This law, which has been in effect for more than 40 years, has provided—as the wording of that statute stipulates—an alternative dispute resolution that is “expeditious, effective and binding....” Although our members have not had to avail themselves of binding arbitration in recent years, if ever, we support maintenance of binding arbitration.

That being said, the Local is willing to consider changes that will expedite the binding arbitration process, remove the state from its financial obligation, and clarify the application of the act to fire authorities. However, we object strenuously to the proposals made by the Michigan Municipal League and its members regarding internal comparability and ability to pay. These proposals would make what is currently a fair process that is used relatively infrequently into one that favors one party—employers—over employees providing for public safety. In particular, recent arbitration rulings very clearly have taken ability to pay into consideration. Please note below excerpts taken directly from four recent arbitration awards; examples clearly showing that arbitrators have taken the financial ability of the local unity of government very seriously in their decision making.



Port Huron, 2009

Section 9 of Act 312 lists a number of factors that the Panel must consider in its finding, Opinion, and Award. Part of Section 9c includes the interest and welfare of the public and the financial ability of the unit of government to meet those costs.

The complexity of financing the requisite components of a Michigan City are myriad. From a micro-economic and macro-economic analysis, it is apparent to the Panel that Port Huron "isn't what it used to be"....In part, the economic factors read as a litany of the downturn of the Michigan economic picture and, for the purposes of this award, relate in part specifically to the City of Port Huron.

- *Healthcare costs are increasing significantly.*
- *The assets in the stock market in pension funds have been substantially reduced.*
- *Unemployment in Michigan is at an all time high.*
- *Federal and state aid has been reduced for cities, towns and villages.*
- *The requirements of GASB 45 and 43 are requiring different funding requirements for pension plans and will do so significantly in the future.*
- *Home values have decreased and more foreclosed homes dot the landscape of Michigan cities.*
- *Port Huron has lost a great deal of its manufacturing base and has not been able to replace it.*
- *Port Huron's obligation for a State of Michigan sewer separation project has (and will) result in unanticipated capital expenditures.*
- *Even with some reduction in the work for in Port Huron, the cost of operating the City continue (sic) to increase.*

The Panel finds that, to a large degree, the City has met its burden regarding the ability (or inability) to pay the monetary requirements of the economic issues in this 312 matter. These factors have been considered, as well as many others, in determining the award for economic issues.



Taylor, 2008

Essentially, the Act 312 criteria address the cost of living, the financial ability of the employer to fund the awards, and internal comparables as well as with other similarly situated public and private employees. In other words, the economic realities of the situation must be considered....

No collective bargaining agreement can be reached in the City of Taylor without recognizing the City's financial condition which is one of the statutory criteria.

As compared to several years ago, the State of Michigan is presently facing an economic downturn which is now prevalent. As a result, the City of Taylor's financial situation has become unstable, through no fault of the administration. There are a number of factors that have destabilized the City's financial position. The financial structure established by the State of Michigan for local governments and Taylor is hurting the city and, in fact, is imposing hardships on the City's budget. These issues include

- Constitutional and statutory property tax limitations with the Headlee Amendment, Proposal A and other statutory provisions....*

- Added restrictions on other revenues such as fees and charges for services with the Bolt Case and the State Construction Act.*

- The City's General Fund is in (and has been in) for the last several years a structural deficit. The City's recurring revenue sources in the General Fund do not provide enough resources to support recurring operating expenditures....*

- The City has deferred necessary capital outlay for the last several years to balance its budget. Spending in this area will have to increase to keep the City in working order....*

- Taylor's taxable value is being negatively impacted by decreases in residential home values, Michigan's economy, foreclosures, and other market forces which could impact the City's General Fund structural deficit in coming years....*

Trenton, 2007

A key issue in this case is the City's ability to pay. It is deemed a part of the Panel's findings on all economic issues.

In recent years, the City of Trenton- like many local units of government in Michigan- has experienced financial difficulties. The parties' proposals must be considered with this fact in mind.



The City's financial condition includes the following:

- Between 2000-2001 and 2006-2007, the City's revenues from the sum of state shared revenue, the court, and interest declined 46% from \$4.1 million to \$2.2 million....

- The City's industrial base is declining.....

- Because the City is already about 90% developed, it cannot realistically "grow" itself to increase revenues. Further, taxable value in the City increased by only 1% between 1990 and 2000.

- Between 1980 and 2006, the City's population declined by 18%....

*- At the hearing, City expert witness Frank Audia of Plante & Moran explained that Michigan municipal finance may be viewed as a "three-legged stool." One leg is (a) **property taxes**. Another leg is (b) **state shared revenue**. The third leg is (c) **other revenue** (such as fees and construction permits.)*

*- (a) **Property taxes**: Under the 1978 Headlee Constitutional Amendment, increases in real estate taxes are limited to increases in the inflation rate, which have been low for a number of years....*

*- (b) **State shared revenue**.... For the five years beginning in 2001 and ending in 2006, the City received \$3.2 million less than what it would have received if its 2000-2001 shared revenue merely had remained constant.*

*- (c) **Other revenue**. In Bolt v City of Lansing, 459 Mich 152; 587 NW2d 264 (1998), the Michigan Supreme Court held that a "fee" which exceeded the cost of regulation was a disguised tax which was unenforceable under the Headley (sic) Amendment because not approved by the city's voters. Bolt has had the effect of reducing the use of "fees" to generate local government revenue....*

Because employee compensation is a major part of the City's budget, caution is necessary in making financial commitments to the City's employees.

Redford Township, 2002

Great deference must be paid to a testimony of the witnesses on behalf of the Township with respect to the issue of ability to pay because certainly they have demonstrated by their past actions an ability to well manage the funds of the community. They did so by building a substantial fund balance. They also testified that when times are better they are more generous.